**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.950 OF 2006

Premnath Ranganath Akde .. Appellant.
Vs.
Trimbak Tatya & Others .. Respondents.

Mr.S.K.Shinde i/b Mr.Kuldeep Patil for the appellant.
Mr.M.M.Sathaye for respondent no.1.

**CORAM : D.B.BHOSALE, J.**

**DATED : 15TH JANUARY, 2007**

P.C.:

. Heard learned counsel for the parties.

2. This second appeal is arising from the concurrent findings recorded by the courts below in the proceedings under Order 21 Rule 97 of the Code of Civil Procedure. The appellant obstructed the execution of a decree of eviction passed against his brother - Vijay and confirmed by the appeal Court. The obstruction was on the basis of a Will dated 5.2.1963 by which the obstructionist claim that the suit property was bequeathed to him by his deceased father. It is clear from the observations made by the courts below that the appellant conceeded that the tenancy rights cannot be bequeathed by the tenant. This is also covered by the judgment of the Apex Court

in **Vasant Vs. Anant in 1994 Mh.L.J.1450** and the judgment of this court in **Dady N. Adenwalla and Others Vs. Burjor H.Antia & Others 2001 (Supp.2) Bom.C.R.640**. In view thereof the contention of Mr.Shinde, learned counsel for the appellant that the tenant has a right to bequeath the rights in tenanted premises must be rejected. Moreover, it cannot be overlooked that both the courts below have held that the obstructionist was not in possession of the suit tenement besides the fact that the obstructionist had given up his right over the suit property as observed in paragraph 17 of the appeal court's judgment. Keeping that in view and considering that there are concurrent findings recorded by the courts below and there is sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure to disturb the findings of fact this second appeal deserves to be dismissed in limine. Order accordingly. The appellant is directed to vacate the suit premises within three months from today subject to filing of an usual undertaking within a period of two weeks from today. If such undertaking is not filed by the appellant, it will be open for the respondent-decree holder to execute the decree.

(D.B.Bhosale, J.)